

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3233

IN THE MATTER OF:

Served September 23, 1988

Application of MEDICO)
TRANSPORTATION SERVICES, INC., to)
Transfer Certificate No. 51 to)
HENRY L. EPPS, JR.)

Case No. AP-88-20

MEDICO TRANSPORTATION SERVICES)
INC., Suspension and Investigation)
of Revocation of Certificate No. 51)

Case No. MP-88-03

By application filed May 26, 1988, Medico Transportation Services, Inc. (Medico or transferor), seeks approval to transfer, by sale, its Certificate of Public Convenience and Necessity No. 51 to Henry L. Epps, Jr. (Mr. Epps or transferee). By Order No. 3127, served February 29, 1988, the Commission instituted an investigation regarding Medico's maintenance of security for the protection of the public. The two matters were consolidated for public hearing by Order No. 3179, served June 15, 1988. The hearing was held on July 21, 1988. Mr. Alfred Gaines, president of Medico, and Mr. Henry L. Epps, Jr., testified. The matters are uncontested.

Certificate No. 51 authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting persons confined to wheelchairs:

between medical treatment facilities located inside the Capital Beltway, on the one hand, and, on the other, points inside the Capital Beltway.

RESTRICTIONS: The service authorized herein is restricted to the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia, and is further restricted to transportation in van-type vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit.

Before deciding Medico's transfer application, the Commission must first resolve the issues raised in its investigation (Case No. MP-88-03). By Order No. 3127, which is incorporated herein by reference, the Commission suspended Certificate of Public Convenience and Necessity No. 51 and directed Medico to comply with Title II,

Article XII, Section 9(a) of the Compact and Commission Regulation No. 62 which deals with security for the protection of the public. Medico was also directed to file an appropriate certificate of insurance or submit other evidence, in writing and under oath, showing good cause why WMATC Certificate No. 51 should not be revoked. At Medico's request, Case No. MP-88-03 was scheduled for public hearing. The hearing was subsequently cancelled by Order No. 3168, served May 12, 1988, at Medico's request. In its request that the hearing be cancelled, Medico represented that a transfer application would be filed with the Commission that would have a direct effect on the outcome of the investigation. The transfer application, docketed as Case No. AP-88-20, was filed on May 26, 1988. Subsequent motions filed jointly by Medico and Mr. Epps for temporary approval and waiver of public hearing were denied by Order Nos. 3207 and 3208, both served July 20, 1988.

At hearing, Mr. Alfred Gaines, president of Medico, testified that due to the increased cost of insurance and other factors, Medico ceased transporting passengers for hire under WMATC Certificate No. 51. Thus, Medico performed no operations in the Metropolitan District after WMATC Certificate No. 51 was suspended. Medico has not renewed its liability insurance and does not intend to do so under any circumstances. Shortly after Medico's certificate was suspended, Mr. Gaines entered into negotiations with Mr. Epps for sale of the certificate. During the course of its operations, Medico was transporting an average of 15 passengers per day in three vehicles. However, when Medico experienced certain difficulties, it ceased operations as required by the Compact, Commission Regulations, and Order No. 3127. Subsequently, Medico entered into negotiations in an attempt to sell its assets and provide for continued service under WMATC Certificate No. 51. Given the testimony regarding ceased operations and the subsequent filing of a transfer application, the Commission finds that transferor has met its burden of proving that WMATC Certificate No. 51 should not be revoked.

We turn now to the issues raised in Case No. AP-88-20. Title II, Article XII, Section 4(h) of the Compact provides that "[n]o certificate under this section may be transferred unless such transfer is approved by the Commission as being consistent with the public interest." In determining whether a transfer is consistent with the public interest, a number of factors are considered, including dormancy of the certificate, fitness of the transferee, and effect of the transfer on the existing competitive balance.

A certificate may become dormant when operations authorized by the certificate cease. Such lack of activity may indicate that there is no longer a need for the service previously performed. It appears that the cessation of operations by Medico under WMATC Certificate No. 51 is not so substantial as to make that certificate dormant. Transferor failed to operate for only a brief period before it entered into negotiations with transferee for the sale of the certificate. There is no evidence in the record which suggests a lack of demand for the service authorized under WMATC Certificate No. 51 as a result of that cessation. Taking official notice of the testimony proffered by

Ms. Janice Anderson, Chief, Program Operations in Research, Office of Health Care Financing, Department of Human Services for the District of Columbia (OHCF) in Case No. AP-88-07, Application of Care Access, Inc., for a Certificate of Public Convenience and Necessity to Conduct Special Operations, we note that WMATC certificated carriers are assigned passengers by OHCF on a rotational basis. Under such a system an approved WMATC carrier would be eligible to be placed in the system and assigned passengers in turn. Mr. Epps testified at hearing that he intends to commence operations within three weeks after a grant of operating authority.

Mr. Epps further testified that he would operate as a sole proprietor. Although the witness is not currently engaged in the transportation of non-ambulatory passengers, he is familiar with the industry. Transferee was employed by Damon's Transportation Company, Inc. (Damon's), for 18 months. Damon's holds WMATC Certificate No. 60 and is authorized to transport non-ambulatory participants in the DC Medicaid program. While working for Damon's, Mr. Epps was responsible for general management of its operations including scheduling of vehicles. Mr. Epps intends to conduct the proposed operations in a manner similar to the operations formerly conducted by Medico. Mr. Epps would be responsible for the overall management of the business and would drive in emergency situations. Transferee plans to commence operations in one vehicle modified for non-ambulatory use. The van would be equipped with a ramp, wheelchair tie-downs, and beeper system. The vehicle would have the capacity to transport four wheelchair passengers at one time. Transferee intends to purchase his primary vehicle and lease a van for back-up purposes. Mr. Epps has hired three drivers who have experience transporting non-ambulatory individuals. The drivers would be responsible for making a daily check of the vehicles. Transferee intends to make monthly inspections of the vehicle. The vehicle would be examined by a professional mechanic every five to six thousand miles.

Transferee's statement of net worth dated May 23, 1988, indicates \$60,000 in assets including \$10,000 in cash and \$50,000 in real property. Liabilities in the form of a \$33,000 long-term note (mortgage) and equity of \$27,000 are also listed. The witness testified that the real property is a rental property and is jointly owned by him and his former spouse. Both of them plan to sell the property, thereby increasing Mr. Epps' cash assets. Transferee expects to have fairly low start-up costs because Damon's will give transferee five wheelchairs, and transferor intends to sell wheelchair ramps to Mr. Epps at a reduced rate. Mr. Epps is familiar with the Compact and Commission rules and regulations and intends to comply with them.

A review of the contract of sale shows that the agreement is contingent upon approval of the transfer by the Commission, and upon acceptance of the transferee as a carrier by OHCF. The contract also provides that "[t]he Seller shall make application on or before May 9, 1988, to the WMATC for transfer of the certificate to Purchaser" The application to transfer WMATC Certificate No. 51 was filed May 26, 1988, several weeks after the time called for

by the contract, and there is no evidence of transferee's acceptance by OHCF. However, at hearing Mr. Alfred Gaines and Mr. Henry Epps, Jr., testified that they are both willing to be parties to the contract even though contingency clauses were not and have not been fulfilled. In fact, it should be noted that transferee cannot be accepted as a carrier for OHCF until he possesses operating authority.

No protests were filed, and no discernible change in the competitive balance of the market is indicated by the circumstances. Based on all these considerations, we find the transfer to be in the public interest.

Transferee proposes to charge the following rates: \$15 per person for each one-way trip and \$25 per person for each round-trip inside the Capital Beltway; \$15 per person for each one-way trip and \$25 per person for each round-trip outside the Capital Beltway, plus 75¢ per loaded mile. A cancellation fee of \$7.50 one-way and \$12.50 round-trip plus an additional manpower charge of \$5 per trip would also be charged. These rates represent fares for service beyond the scope of the authority contained in WMATC Certificate No. 51. WMATC Certificate No. 51 authorizes transportation between points located wholly inside the Capital Beltway. Transferee will be directed to submit a revised tariff that reflects the limitations of WMATC Certificate No. 51.

THEREFORE, IT IS ORDERED:

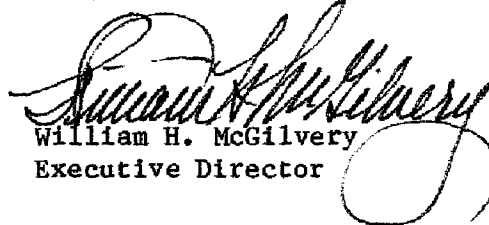
1. That the application of Medico Transportation Services, Inc., to transfer Certificate of Public Convenience and Necessity No. 51 to Henry L. Epps, Jr., is hereby conditionally granted, contingent upon compliance with the terms of this order.

2. That Henry L. Epps, Jr., is hereby directed to file with the Commission the following: (a) written notice that the transfer transaction has been consummated; (b) two copies of his WMATC Tariff No. 1 revised as discussed in the body of this order; (c) a list of equipment indicating make, model, serial number, license plate number, vehicle number, and ownership of all vehicles to be used in WMATC operations; (d) a certificate of insurance in accordance with WMATC Regulation No. 62; (e) an affidavit that all vehicles have been identified in accordance with Commission Regulation No. 67; and (f) executed copies of leases pursuant to Regulation No. 69 for each vehicle leased by Mr. Henry L. Epps, Jr., for use in WMATC operations.

3. That unless Mr. Henry L. Epps, Jr., complies with the preceding requirements within 30 days from the service date of this order, or such additional time as the Commission may authorize, the grant of approval herein will be void and, effective upon the expiration of such time for compliance, the application shall stand denied in its entirety, and Certificate of Public Convenience and Necessity No. 51 shall stand revoked for willful failure to comply with the Compact, Title II, Article XII, Section 9(a) and Commission Regulation No. 62.

4. That upon compliance with the conditions set forth in the preceding paragraphs, Certificate of Public Convenience and Necessity No. 51 will be reissued to Henry L. Epps, Jr., and Case No. MP-88-03 will be discontinued.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director